

Veto Message For Special Counsel Provision passed by the Village Board 1-26-2015

In accordance with Sections 1-5-4 and 1-5-12 of the Village Code and Sections 3.1-45-5 and 3.1-40-45 of the Illinois Municipal Code, I hereby veto Ordinance No. 15-1 entitled "ORDINANCE REPEALING AND REPLACING SECTION 1-6-6(D) OF THE VILLAGE CODE", which was passed by the Village Board of Trustees on January 26, 2015.

This measure violates the constitutional right of residents to change or alter the Village's form of government by referendum pursuant to Section 6, Article VII of the Illinois Constitution. Therefore, this measure is unconstitutional and legally invalid. While certain Trustees of the Board have resolved to trample on the constitutional right of Village residents; they will not do so without my firm veto opposition. It is an affront to the residents who elected the Village President to uphold the law.

For the past 25 years, the Village President has had the authority to appoint special counsel in addition to the Village President's authority to appoint the Village Attorney among other officers. Over these years, the Village President has made numerous appointments of special counsel for various reasons. The presidential power of appointment is in accord with the Village's long established Trustee-Village form of government. Under the Trustee-Village form of government, appointments to nonelective offices are made by the Village President. 65 ILCS 5/3.1-30-5. Currently Section 1-6-6(D) of the Village Code is the codification of the Village President's authority to appoint special counsel. The Illinois Supreme Court explained in 1976 that the Commission form of government is the only form of government whereby council members have the power and authority to make appointments to non-elective offices. 65 ILCS 5/4-5-5. See also, *Pechous v. Slawko*, 64 Ill. 2d 576, 584-85, 357 N.E.2d 1144, 1149 (1976).

The Illinois Supreme Court has also determined that measures, such as this one proposed by Trustee Messer, and voted on by this board violate the Illinois Constitution when passed without referendum. *Id.* Pursuant to Section 6, Article VII of the Illinois Constitution "[a] home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law" and "[a] home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law." The Illinois Supreme Court has interpreted these constitutional provisions to absolutely prohibit a village board's action vesting the power of appointment with a village board of trustees without a referendum. *Pechous*, 64 Ill. 2d at 588, 357 N.E.2d at 1151. Any such action is flatly unconstitutional and invalid. *Id.*

The measure drafted and proposed by Trustee Messer and passed by a majority of the Village Board unequivocally vests the power to appoint special counsel with the Village Trustees to the exclusion of the Village President. This action attempts to change and alter the Village's form of government without referendum. This action is unconstitutional, invalid and demonstrates an contempt for the right of Village residents to determine and alter their own form of government.

Certain Trustees have determined that their unilateral control outweighs the constitutional rights of Village residents. I strongly urge the Village Trustees to forego any effort to override my veto so as to avoid a blatant constitutional violation and to avoid further Village embarrassment for engaging in this improper action.

I am firmly opposed to this measure. Accordingly, I must return this Ordinance to the Village Board of Trustees with my veto. Pursuant to Sections 1-5-4 and 1-5-12 of the Village Code and Sections 3.1-45-5 and 3.1-40-45 of the Illinois Municipal Code, I hereby return Ordinance No. 15-1 entitled "ORDINANCE REPEALING AND REPLACING SECTION 1-6-6(D) OF THE VILLAGE CODE", to the next regular meeting of the Village Board of Trustees, occurring not less than 5 days after the date of passage, with the foregoing objections, vetoed in its entirety.

Sincerely,

_____ Martin J. McLaughlin, Village President, Village of Barrington Hills

Dated: